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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,851	05/28/2002	Horst Rapp	HMN 2 0021	8437
27885	7590	09/23/2009		
FAY SHARPE LLP 1228 Euclid Avenue, 5th Floor The Halle Building Cleveland, OH 44115			EXAMINER CHONG, YONG SOO	
			ART UNIT	PAPER NUMBER
			1617	
			MAIL DATE	DELIVERY MODE
			09/23/2009 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/031,851

**Applicant(s)**

RAPP ET AL.

**Examiner**

Yong S. Chong

**Art Unit**

1617

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 10 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1, 3, 6-21 and 34-47.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Yong S. Chong/  
Primary Examiner, Art Unit 1617

Continuation of 11, does NOT place the application in condition for allowance because: Applicant argues that the Berger reference does not give a general teaching that common skin diseases such as psoriasis and herpes can be treated with biocidal compositions that are used for disinfection. This is not persuasive because the standard for obviousness is not absolute but a reasonable expectation of success. Berger was merely used to show that biocidal compositions can be used to treat common skin diseases. Furthermore, it is not necessary to provide evidence, but a teaching by the cited prior art reference is enough.

Applicant argues against the Vandeveldt reference that "chloramine T acts against viruses on inanimate objects provides motivation to administer for treating skin diseases" is merely conclusionary. Many disinfectants are extremely dangerous and detrimental to any type of skin contact. While this may be true, Applicant has not provided any such teaching in the cited prior art. Furthermore, Vandeveldt, clearly teaches tosylchloramide(s) and its known derivatives, in particular, Chloramin T, for use in a pharmaceutical composition by topical administration to skin broadly and hair and methods of treating skin diseases. Nonetheless, the mere mention that chloramine-T acts against viruses on inanimate objects provides sufficient motivation to administer a composition comprising chloramine-T as a medicament or a pharmaceutical composition for treating other skin diseases, such as herpes simplex virae, because one of ordinary skill in the art would have had a reasonable expectation of success in treating a viral disease.

Applicant argues that there is no nexus between skin diseases and biocidal compositions that are used for disinfection. This is not persuasive because Applicant has again attacked each reference individually for lacking the teaching that is provided for in the other reference. Although Harwardt does not teach treating skin diseases, the Berger reference teaches the nexus between skin diseases and disinfecting active ingredients. Specifically, the Berger reference teaches that common inflammatory skin diseases, such as psoriasis and herpes, are caused by bacteria, viruses, and fungi, which can be effectively treated with biocidal compositions that are used for disinfection. Further, there is nothing in the Harwardt reference that teaches that chloramine-T alone is not suited for antiseptic or disinfection purposes.